IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/09/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.25945 of 2003
and
Crl.M.P.No.7323 of 2003

1.Pulavar B.M.Senguttuvan
2.Panneerselvam
3.Sakthivel
4.Tmt.Valli. ... Petitioners

-Vs-

The State,rep. by
Deputy Superintendent of Police,
Vigilance & Anti-Corruption Wing,
Trichy. ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioners : Mr.K.M.Vijayan, Senior Counsel
for Mr.V.Illanchezhian.

For respondents : Mr.I.Subramanian,
Public Prosecutor
for Mr.A.N.Thambidurai,
Govt.Advocate(Crl.side)

:O R D E R

The petitioners who are accused No.1 to 4 in the case registered by the respondent in his Crime No.1/2003 have filed the above Criminal Original Petition praying to call for the records relating to the order passed by the respondent under Section 160(1) of Cr.P.C. dated 1.8.2003 and quash the same.
2. In the grounds offered by the petitioners they would submit that the impugned order issued compelling the petitioners who are the accused to be witnesses under Section 160(1) of Cr.P.C. is contrary to the Constitutional prohibition under Article 20(3) of the Constitution of India; that the notice issued under Section 160(1) of Cr.P.C. is restricted only for a uniform and is a glaring illustration of mala fide exercise of powers on extraneous

reasons and with ulterior motives; that the petitioners are always willing to cooperate with the investigation done in accordance with law; that the respondent failed to see that the petitioners are the accused under the provisions of the Prevention of Corruption Act and in fact the respondent has erred in passing such an order which is against law and the same will not be applicable to the accused in the crime registered by the respondent; that the respondent failed to note that Section 160(1) of Cr.P.C. empowering to pass such order is only for the witnesses and not the accused; that the respondent has passed the order in excess of his jurisdictional issue; that the order passed by the respondent is arbitrary since Section 160(1) does not empower the respondent to require the accused for an enquiry; that the order passed by the respondent is disproportionate and against law and is liable to be quashed. On such grounds the petitioners would pray for the relief extracted supra.

3. During arguments, the learned senior counsel appearing on behalf of the petitioners would submit that the petitioners are the accused in a case registered by the respondent for an offence punishable under section 13(2) r/w 13(1)(e)of the Prevention of Corruption Act, 19 88 r/w Section 109 of I.P.C.; that on search and seizure the preliminary investigations were conducted and at this juncture the respondent has issued summons u/s 160(1) of Cr.P.C. to appear as witnesses which is under challenge before this Court in the above Criminal Original Petition.

4. The learned senior counsel citing Article 20(3) of the Constitution of India would recite that □no person accused of an offence shall be compelled to be a witness against himself□ and would add that the Constitution clearly defines □person accused□ and the □accused□ distinctly and differently and therefore, the interpretation of Section 16 0 should be made in conformity with the Constitutional protection. The learned senior counsel would clarify that the terms □any person□ employed under section 160(1) of Cr.P.C. after the state of identification the accused should not be issued with summons to appear as witness and in doing so will violate Article 20(3) of the Constitution of India.

5. At this juncture, the learned counsel would cite a judgment of the Hon□ble Apex Court delivered in SMT.NANDINI SATPATHY vs. P.L.DANI AND ANOTHER reported in AIR 1978 SC 1025 wherein it has been held:

"Art.20(3) goes back to the stage of police interrogation - not, as contended, commencing in court only. In our judgment the provisions of Art.20(3) and Section 161(1) substantially cover the same area, so far as police investigations are concerned. The ban on selfaccusation and the right to silence, while one investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter. We are disposed to read ` compelled testimony' as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative polixity, overbearing and intimidatory methods and the like - not legal penalty for violation. So, the legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as compulsion within the meaning of Art.20(3). The prospect of

prosecution may lead to legal tension in the exercise of a constitutional right, but then, a stance of silence is running a calculated risk. On the other hand, if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt, it becomes `compelled testimony', violative of Art.20(3)."

6. Citing the above paragraphs from the above judgment, the learned senior counsel would further comment on para 33 of the judgment which is relied on by the learned Public Prosecutor and would say that it is not the ratio according to the learned Judges as they specifically expressed the law as laid down after para.52. The learned senior counsel would end up his arguments with a note that the law is clear to the effect that under Section 160(1) examining a person who is an accused is nothing but illegal compulsion; that only to give torture and pressure on the accused the respondent has resorted to issue the above notice. On such arguments, the learned counsel would pray to quash the order impugned herein.

7. On the contrary, the learned Public Prosecutor, High Court, Madras appearing on behalf of the respondent would submit that the case is under the threshold of the prosecution and would greatly rely on paragraphs 33 and 53 of the same judgment reported in Nandini Sathpathy s case (AIR 1978 SC 1025) and would extract the said paragraphs which are:
They reached the conclusion that any person in S.161 Cr.P.C. would include persons then or ultimately accused. The view was approved in Mahabir Mandal s case (1972)3 SCR 639) at p.657: (AIR 1972 SC 1331 AT PP.1341, 1342). We hold that any person supposed to be acquainted with the facts and circumstances of the case includes an accused person who fills that role because the police suppose him to have committed the crime and must, therefore, be familiar with the facts. The supposition may later prove a fiction but that does not repel the section. Nor does the marginal note examination of witnesses by police clinch the matter. A marginal note clears ambiguity but does not control meaning. Moreover, the suppositions accused figures functionally as a witness. To be a witness, from a functional angle, is to impart knowledge in respect of a relevant fact, and that is precisely the purpose of questioning the accused under S.161, Cr.P.C. The dichotomy between witnesses and accused used as terms of art, does not hold good here. The amendment, by Act XV of 1941, of Section 162(2) of the Cr.P.C. is a legislative acceptance of the Pakala Narayana Swamy reasoning and guards against a possible repercussion of that ruling. The appellant squarely fell within the interrogational ring. To hold otherwise is to fold up investigative exercise, since questioning suspect is desirable for detection of crime and even protection of the accused. Extreme positions may boomerang in law as in politics. Moreover, as the Miranda (1996)384 US 436) decision states (pp.725,72 6):
It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence."

In paragraph 53 it is clearly stated:

We hold that Section 161 enables the police to examine the accused during investigation

8. The learned Public Prosecutor would then rely on paragraph 19 of the judgment of the Apex Court in Union of India Vs. Prakash P. Hinduja and another reported in IV (2003)SLT 335 which is extracted hereunder:
Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer-in-charge of police station in Court under Section 173(2), Cr.P.C., this field being exclusively reserved for the Investigating Agency.

On such arguments, the learned Public Prosecutor would find no anomaly or irregularity or excess of jurisdiction in the issuance of the notice under Section 160(1) of Cr.P.C. summoning the accused for interrogation and affirming that the police are competent to issue such notice and the accused must abide by and would pray to dismiss the above Criminal Original Petition.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned senior counsel appearing on behalf of the petitioners and the learned Public Prosecutor, High Court, Madras, what comes to be known is that it is the notice issued by the respondent investigating officer in the case registered in their Crime No.1/2003 for the offences punishable under Sections 13(2) r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988 r/w Section 109 of the I.P.C. wherein the petitioners No.1 to 4 are the accused. While so, the respondent passed an order inhis proceeding dated 1.8.2003 requiring the petitioners/accused to appear before him on 9.8.2003 at 10.00 a.m. for interrogation in exercise of his authority under Section 160(1) Cr.P.C. It is this order, which is testified by the petitioners in the above criminal original petition on ground that it is the mala fide exercise of power by the respondent on extraneous reasons and with ulterior motives since the petitioners are the accused against whom passing an order of this sort requiring the accused to appear as witnesses for interrogation is an error apparent on the face of the order passed by the respondent; that the act of the respondent is against law and spirit of Article 20(3) of the Constitution of India which recites that `no person accused of an offence shall be compelled to be a witness against himself' and hence the interpretation of Section 160(1) Cr.P.C. should be made only in conformity with the constitutional protection and therefore `any person' employed under Section 160(1) Cr.P.C. does not include any accused person and they should not be summoned to appear as witnesses since it is violative of Article 20(3) of the Constitution.

10. The learned senior counsel would cite paragraphs 53 and 54 of the judgment of the Honourable Apex Court in Nandini Satpathy's case reported in AIR 1978 SC 1025 and the relevant passages have already been extracted in paragraph No.5 supra.

11. On the other hand, the learned Public Prosecutor, High Court, Madras would cite paragraph No.33 of the same judgment wherein the Full Bench of the Honourable Supreme Court citing the extract from the old Privy Council's judgment reported in AIR 1939 PC 47 and quoting from the language of Tindal, C.J. pertaining to the rule of construction of Acts of Parliament , would ultimately quote the ruling which has been extracted in para.7 supra. In these circumstances, a crucial decision has to be arrived at by this Court regarding the point for consideration `whether such a summons issued under Section 160(1) Cr.P.C. could be sent by the investigating authority to an accused to appear before him for interrogation?'

12. So far as the petitioners are concerned, they strongly contend that the term `any person' employed in Section 160(1) Cr.P.C. means only the witness as the marginal note of the said Section reveals stating `examination of witnesses by police', which has been answered in the negative by the Honourable Apex Court in the above quoted judgment reported in AIR 1978 SC 1025 stating that `marginal note clears the ambiguity, but does not control meaning' and further stating that ` the suppositions accused figures functionally as a witness and `to be a witness' from a functional angle, is to impart knowledge in respect of a relevant fact and that is precisely the purpose of questioning the accused under Section 161 Cr.P.C.' and have authoritatively declared that `the appellant squarely fell within the interrogational ring' and `to hold otherwise is to fold up investigative exercise since questioning suspect is desirable for detection of crime and even protection of the accused' ultimately ending up stating `we hold that Section 161 enables the police to examine the accused during investigation.'

13. In the latest judgment of the Honourable Apex Court reported in IV (2003) SLT 335, the Honourable Apex Court again has laid emphasis, clearing any doubt that may arise in the mind of anyone, cautioning against interference of the Court `with the investigation or during the course of investigation which would mean from the time of lodging of the First Information Report till the submission of the report under Section 173(2) Cr.P.C., this field being exclusively reserved for the Investigating Agency.' Therefore, there is no gainsaying that either the act of the respondent is against the law or against the spirit of Article 20(3) of the Constitution of India and hence even interpreting Section 160(1) Cr.P.C. in conformity with the above constitutional provision, the conclusion that could be arrived at is `any person' mentioned in Section 160(1) Cr.P.C. means and includes `any accused person' and they could be summoned to appear as witnesses since such a summons issued to an accused in a case under investigation by the Investigating Officer is not at all violative of the Article 20(3) of the Constitution of India and hence the following order:

In result,
(i)for all the above discussions held, the above criminal original petition does not merit acceptance but only becomes liable to be dismissed and is dismissed accordingly.

(ii)The order dated 1.8.2003 passed by the respondent under Section 1 60(1) Cr.P.C. is confirmed.

Consequently, Crl.M.P.No.7323 of 2003 is also dismissed.

Index: Yes
Internet: Yes
gr/Rao

To

1.The Deputy Superintendent of Police,
Vigilance & Anti-Corruption Wing,
Trichy.

2.The Public Prosecutor,
High Court, Madras.